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C O N F I D E N T I A L SECTION 01 OF 04 BOGOTA 002566

SIPDIS

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TAGS: PTER KJUS PHUM CO AUC
SUBJECT: AUC REJECTS LAW FOR JUSTICE AND PEACE

Classified By: Ambassador William B. Wood for reasons
1.4 (b) and (d).

Summary

¶1. (C) The AUC publicly rejected the GOC's draft Law for Justice and Peace on March 15. They complained it did not provide genuine reinsertion benefits, generated too much legal uncertainty, should be a statutory law, and imposed unfair prison sentences. In response, the House and Senate first committees rejected a proposal to make the law statutory. The Senate committee rejected a proposal to allow the AUC to present its views to Congress, but the House committee approved it. The AUC will continue to try to influence the outcome of the law, especially when it is debated in the plenary, where AUC influence is greater. End summary.

¶2. (U) On March 15, the leadership of the United Self Defense Forces of Colombia (AUC) issued a communique addressed to Congress rejecting the GOC's draft Law for Justice and Peace. They claim that:

-- The AUC was formed in part from a failed demobilization of illegal self-defense forces in Magdalena and Cordoba Departments in the early 1990s. They warn that the GOC's draft law would repeat the same mistakes as the earlier demobilization by focusing too much on punishment and disarmament instead of providing reinsertion and re-socialization services.

-- The law generates too much legal uncertainty for beneficiaries.

-- It should be statutory rather than ordinary legislation and therefore cannot be debated in extraordinary session.

-- The five to eight year mandatory time in confinement is really not an alternative sentence because it is equivalent to what an ordinary criminal sentenced to 40 years would serve after reducing his sentence with good behavior, studying, working, and other reductions permitted in the criminal code. They specify that they are willing to accept a law that requires a longer period of confinement, but only if they can reduce it through all options available in the criminal code.

-- The law is specifically designed to punish the AUC because it only applies to groups that demobilize before the law is finalized, which they say would be around the end of May. They said it was not believable that the country's guerrilla groups would enter in a peace process before that time.

¶3. (C) The communique does not directly threaten to break off talks if the draft law passes. However, since public debate on the demobilization laws began in earnest in February, negotiations have been on hold. Restrepo's staff has said they do not expect another bloc to demobilize until the law is finalized. OAS verification mission chief was in Cordoba last week in part to determine why talks had stalled.

¶4. (SBU) In reaction to the communique, Senator Dario Martinez (who has been highly critical of the GOC's draft law) proposed delaying the debate and making the law statutory. On March 15, both the Senate and House first committees rejected the proposal. On the same day, Representative Rocio Arias (who is an outspoken proponent of the AUC) proposed inviting the AUC to present their views to Congress. The Senate committee rejected the proposal, but the House committee approved it.

¶5. (C) This will not be the last time the AUC tries to influence the outcome and insert itself into the debate. Their pressure will likely increase when the law reaches the full House and Senate, where there are more members sympathetic to the AUC.

Unofficial Translation:

Honorable Congressmen: We request to speak.
A brief reminder about the demobilizations of self-defense forces in Magdalena and Cordoba, carried out at the beginning

of the 1990s, illustrates how processes of subjugation to justice end up plunging the country into a vicious circle of recurring violence. Especially when it has to do with armed organizations that have not been defeated militarily.

There is no doubt that when we accepted the government's invitation to hold political negotiations about peace we were committed to contributing to the deactivation of the war through a process of demobilization, disarmament, and reinsertion that would definitively eliminate paramilitarism as a player in the armed confrontation. For this reason, the current negotiation cannot be reduced to simply taking apart the self-defense forces structures and counting weapons. This has to be a genuine process that, on one hand, facilitates reinsertion to productive life for thousands of combatants and, on the other hand, generates in the abandoned regions a strong institutionalization, which would require the state to intervene in regional security, reactivate the economy, and invest in health, education, housing, basic public services, and productive employment. This is what we will continue to count on.

This is precisely what did not occur in Magdalena and Cordoba, where there was a process of subjugation to justice, which became nothing mora than a simple mathematical operation of counting weapons and militarily retaking territory. Several years later, several self-defense strongholds that had avoided demobilization re-formed and expanded throughout national territory thanks to, among other reasons, the addition of hundreds of ex-combatants who had suffered from the government's failed demobilization. This was how the AUC was born. Like it or not, the AUC are sons of these irregular processes which led us to recuperate territory that had been neglected by the state in order to create conditions of social and economic order for hundreds of marginalized communities that were left with only two options: plant coca or landmines.

We have repeatedly insisted on the political nature of negotiations, whose fundamental goal is to eliminate all the factors that make the AUC a "necessary" part of the armed conflict. It is clear that this process of subjugation to justice, which they are attempting to impose on us, will not create the necessary economic and social conditions to allow an eventual and definitive end to paramilitarism.

The bill that the government is discussing with the congressional committees lays out a legal framework for demobilizing and disarming several AUC structures, but lacks an effective mechanism for peace or reconciliation. The result is that, from the political point of view, it is an overly unstable instrument to end paramilitarism. That much is clear.

In addition to its inability to establish peace, the bill generates all kinds of uncertainties about future juridical security. It seems to us that the urgency surrounding the bill, led it to be ordinary legislation when, in our view, it should be statutory as it establishes criminal procedures, offers some legal benefits, denies the application of substitute prisons, restricts guarantees and rights, and outlines certain punishable conduct.

Being a statutory bill, by constitutional mandate, it cannot be debated in extraordinary sessions at the President's orders. Moreover, as a statutory law, it is officially controlled by the constitution, which would determine its constitutionality before it could be finalized. This would not happen to ordinary laws, which instead could be declared unconstitutional two or three years after being passed. We consider the constitutionality of this future law to be the first threat against the current peace process. It would put demobilized combatants in serious danger.

At the same time, it is necessary to address the distorted and vicious view that some furious enemies of the peace process have publicized in the media that there is a high level of impunity in the level of punishments established by consensus in the Presidential Palace. We must say that a term in confinement, estimated to be between five and eight years, exempt from benefits granted by ordinary laws that apply to all Colombians, ends up being almost equal to what a criminal sentenced to forty years in jail, who is subject to all the reductions allowed under normal law, would serve. Moreover, the said criminal would not have to confess, be economically ruined, or ask for public pardon.

Given the way things are, from the penal point of view, it would be easier to curtail the sentence for the murderer Gavarito, accused of raping, killing, and chopping up more than twenty children, than for the AUC members, who are disposed to voluntarily turn in more than 18,000 guns and combatants, after many years of being obliged to take up arms in the face of a indolent and resigned state.

In effect, according to the framework of the current

accusatorial system, a person given a sentence of forty years in prison can reduce the penalty to up to fifty percent by plea bargaining and voluntarily accepting charges. So, we would be talking about twenty years in prison. This would be reduced to twelve years by conditional liberty (parole). Then the prisoner could work, study, or teach, for which the Prison Code allows reductions of four months per year. This would make the sentence nine years.

We would be disposed to accept a discrete increase in the sentences contemplated in the bill in exchange having the reduction benefits that the criminal codes grant to all convicts. Let us look, for example, at the case of the rendition of punishments: if the central goal of the punishment is re-socialization, we do not understand how re-socialization would be possible if we are deprived of a reason to work, study, or teach.

Returning to the bill, in terms of its efficacy as an instrument for peace, the government has said that it would apply to all illegal armed groups that demobilize and work for national peace. However, the time frame of when the law would be in force negates the concept of universality that the government attempted to establish. Article 65 established that the law would apply only to actions taken after the law goes into effect.

This means that if the so-called justice and peace law goes into effect on May 31, its "benefits," exemptions, and prerogatives, would only cover actions taken before this date. It is certainly unlikely that the FARC, ELN, and other self-defense forces not participating in the peace process, will take actions to open a peace process with the government before May 31. In other words, if the FARC were to decide to start a peace process in the next four or five years, they would have to stop committing crimes and renounce all criminal activity by May 31 if they want to benefit from this law. No one believes this will happen.

In conclusion, this bill was deliberately designed for only one of the actors in Colombia's conflict. We do not doubt that if this initiative, with its supposed "universal" character, were also designed for the communist guerrillas, it would not have time in confinement, individual trials, confessions converted into denunciations by the dangerous concept of "collaboration with justice," legal insecurity, special tribunals, denial and restriction of guarantees and rights, and seizure of assets that were acquired licitly. More importantly, it would be free from criticism of the hypocritical spokesmen of a new morality who have turned the concept of peace into intrigue, vengeance, and politicking.

Santa Fe de Ralito, March 15, 2005.

Central Staff.

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